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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 773

SAM CERAMI,
Petitioner,

versus

WM. D. HAAS, JR.

REPLY BRIEF, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPRPME COURT OF THE STATE OF LOUISIANA

GEORGE SETH GUION,
THOMAS E. FURLOW,
R. HARRY OLIVER, JR.,
SEABORN L. DIGBY,
Attorneys for Petitioner.

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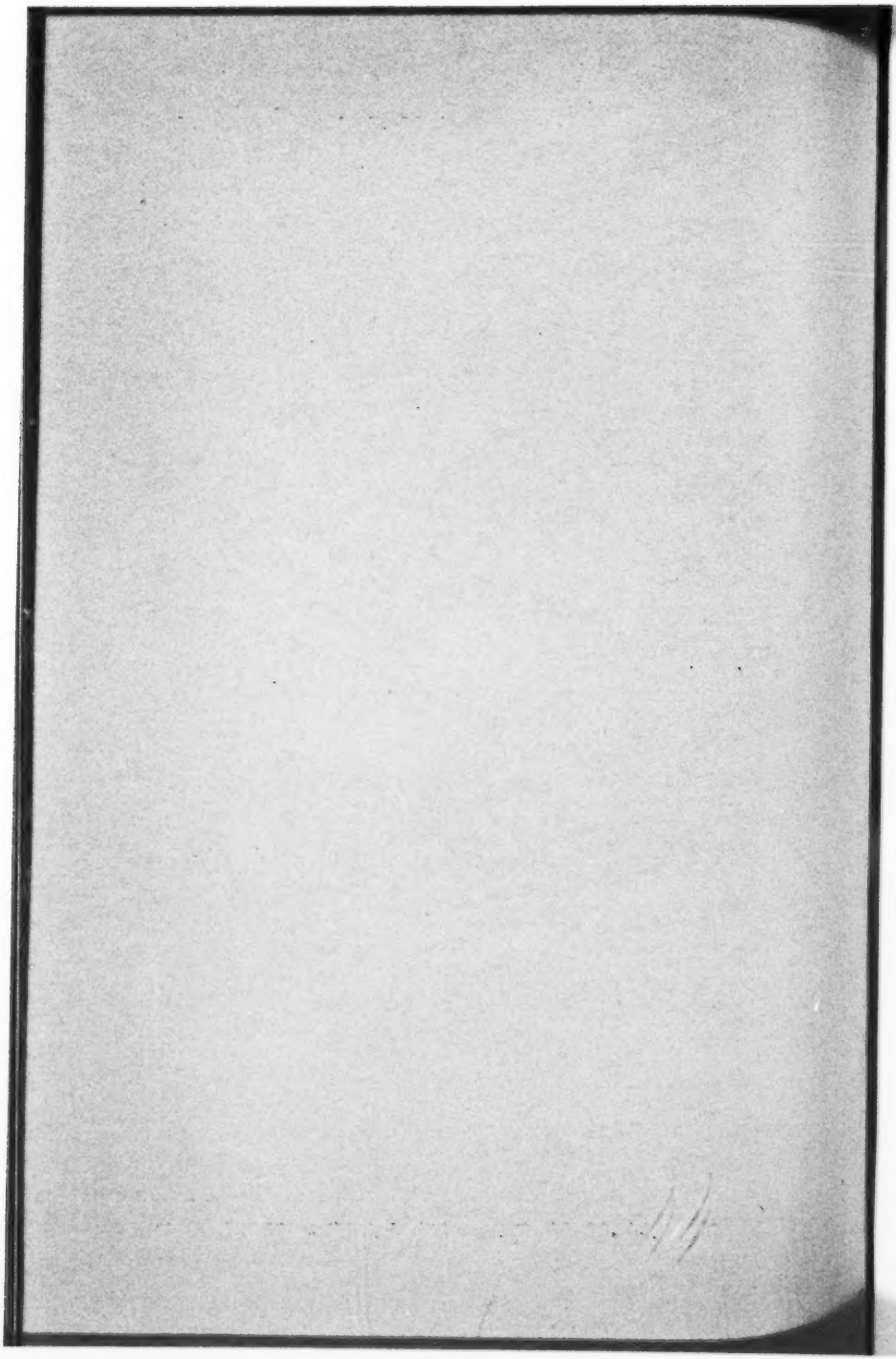

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May It Please the Court:

A reply to respondent's brief seems in order. For the greater convenience of the Court, we are inserting an appendix containing the constitutional and statutory provisions of Louisiana to which reference is made.

Respondent says that the Court has not jurisdiction to grant a writ of certiorari in this case, and assigns four reasons:

1. "There was not drawn into question the validity of a statute of Louisiana on the ground of its being repugnant to the United States Constitution, or laws of the

United States." Petitioner believes that the laws of Louisiana upon which he relies are perfectly valid and are controlling. Hence, his earnest effort to induce the courts of Louisiana to be guided by them.

2. "No title, right, privilege, or immunity is set up or claimed under the Constitution. Judicial Code, Sec. 237." That the state shall not deprive him of his property, without due process of law, is a right guaranteed to petitioner by Section 1 of the Fourteenth Amendment, and the record abundantly shows that he set up and claimed that right throughout the proceedings in the State courts.

3. "It is claimed that the judgment of the Louisiana Supreme Court enforcing a contract of sale is in contravention of laws of Louisiana." That alone might bring the case within the jurisdiction of the Court, but from the next paragraph of respondent's brief it appears that he considers petitioner's contention to be merely that the Supreme Court of Louisiana has placed upon the laws of Louisiana a wrong construction. That is not correct. Petitioner contends that the judgment holding that the instrument involved is a bilateral and reciprocal *contract to sell* and ordering petitioner to perform it is in contravention of the laws of Louisiana and deprives petitioner of his property, without due process of law.

4. "Whether the provisions of the Revised Civil Code of Louisiana and the Code of Practice are to be construed one way or another is a State question, the final decision of which rests with the courts of the State. The due process of law clause in the Fourteenth Amendment does not take up the Statutes of the several States and make them the test of what it requires; nor does it enable the United States

Supreme Court to revise decisions of the State courts on questions of State law." The last sentence is quoted from *Hebert v. Louisiana, 272 U. S. 312, 316, 71 L. Ed. 270, 273,* where it is followed by, "What it does require is that state action, whether through one agency, of another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as 'law of the land'." Thus, respondent's statement of the law is substantially correct,—"providing always that the statute as thus construed does not violate the Constitution of the United States, by depriving of property without due process of law," as was said in *Castillo v. McConnico, 168 U. S. 674, 693, 42 L. Ed. 622, 626,* the first case cited by respondent. But, as said before, no such question is presented here. Petitioner does not complain that the construction of laws of Louisiana by the Supreme Court of the State is erroneous. *The record is devoid of construction of any law of Louisiana.* Petitioner relies upon the laws as they stand, clear and free from ambiguity. He contends that the judgment is in contravention of those laws, and that "by disregarding both the letter and the spirit of those laws and substituting therefor its own fiat, the Court has disregarded also the plain mandate of Article 13 of the Civil Code; and has indulged in judicial legislation," and that, for those reasons, the judgment deprives petitioner of his vested rights and of his property, without due process of law, in contravention of specified provisions of the Constitution of Louisiana and of the Fourteenth Amendment.

The principles upon which petitioner relies are so well recognized that argument is wholly unnecessary to support them.

"The right of acquiring and possessing property, and having it protected, is one of the natural, inherent and inalienable rights of man."

Vanhorne v. Dorrance, 2 Dall. 304, 310, 1 L. Ed. 391. 394.

"Without the guaranty of 'due process' the right of private property cannot be said to exist, in the sense in which it is known to our laws. The principle, known to the common law before the Magna Charta, was embodied in that Charter (2 Coke, Inst. 45, 50), and has been recognized since the Revolution as among the safest foundations of our institutions. Whatever else may be uncertain about the definition of the term 'due process of law', all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing."

Ochoa v. Hernandez y Morales, 230 U. S. 138, 57 L. Ed. 1427, 1437.

"The Amendment (14th) governs the action of the State, whether through its legislature, through the courts, or through its executive or administrative officers."

Mooney v. Holohan, 294 U. S. 102, 113, 79 L. Ed. 791, 794.

Ex Parte Virginia, 100 U. S. 347, 25 L. Ed. 676.

Missouri Pacific R. Co. v. Nebraska, 164 U. S. 403, 417, 41 L. Ed. 489, 495.

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In *Chicago, B. & Q. R. Co. v. Chicago, supra*, the Court was considering a final judgment of the Supreme Court of Illinois in an expropriation suit in which the amount awarded the railroad company for its property expropriated was manifestly insignificant when compared to the value of the property. Holding that the inhibition of the Fourteenth Amendment applied to the courts of a State, as well as to its legislative and executive departments, the Court said:

> "This must be so, or, as we have often said, the constitutional provision has no meaning, and 'the state has clothed one of its agents with power to annul or evade it' . . . But a state may not, by any of its agencies, disregard the prohibition of the 14th Amendment. Its judicial authorities may keep within the letter of the statute prescribing form of procedure in courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that Amendment. In determining what is due process of law regard must be had to the substance, not to form. This Court, referring to the 14th Amendment, has said: 'Can a state make anything due process of law which by its own legislation it chooses to declare such? To affirm this is to hold that the prohibition to the states is of no avail, or has no application where the invasion of private rights is effected under the forms of state legislation.' Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 616, 619. The same question could be propounded, and the same

> answer should be made, in reference to judicial proceedings inconsistent with the requirements of due process of law. . . . In Davidson v. New Orleans, above cited, it was said that a statute declaring in terms without more, that the full and exclusive title to a described piece of land belonging to one person should be and is hereby vested in another person, would, if effectual, deprive the former of his property without due process of law, within the meaning of the 14th Amendment. . . . Such an enactment would not receive judicial sanction in any country having a written constitution distributing the powers of government among three coordinate departments, and committing to the judiciary, expressly or by implication, authority to enforce the provisions of such Constitution. It would be treated, not as an exertion of legislative power, but as a sentence—an act of spoliation. Due protection of the rights of property has been regarded as a vital principle of republican institutions."

In *Missouri Pacific R. Co. v. Nebraska, supra,* the Court considered an order of the State Board of Transportation of Nebraska which required the railroad company to surrender a part of its land to certain parties for the purpose of building and maintaining a grain elevator thereon, which order had been affirmed by the highest court of the State. The Court said:

> "The order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining an elevator upon it, was, in essence and effect, a taking of private property, for the private use of the petitioners. The taking by a state of the private property of one person or corporation, without the owner's consent, for

> the private use of another, is not due process of law, and is a violation of the 14th Amendment to the Constitution of the United States."
>
> *Washington ex rel. Oregon R. & N. Co. v. Fairchild, 224 U. S. 510, 524, 56 L. Ed. 863, 868.*

That, is the situation here. Petitioner's property, shown to be worth more than $90,000, is taken from him and given to respondent for an amount considerably less than one percent. of that value; and to accomplish that purpose the Court has disregarded the statute law of the State and its own established jurisprudence and rendered a judgment clearly in contravention thereof. The Court has legislated in this case and, in doing so, has repealed by implication much of the law of contracts of the State. Of course, that is not in harmony with constitutional principles, for, as was said in *Saint v. Allen, 169 La. 1046, 1053:*

> "The principle announced in Sections 1 and 2 of Article II of the Constitution (of Louisiana) is the foundation on which our system of republican government is established, and is safeguarded in the Constitution of the United States and that of every one of the States."

If it be said that the Court has merely construed the law, that is not borne out by anything in the record; and if that were true, the rule expressed in Article 13 of the Louisiana Civil Code since 1808 would control:

> "When a law is clear and free from ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit."

In *Hamilton v. Rathbone, 175 U. S. 444, 449, 44 L. Ed. 219 221,* it was said:

> "The cases are so numerous in this court to the effect that construction lies wholly within the domain of ambiguity, that an extended review of them is quite unnecessary . . . where the act is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given to it."

Further argument would be repetitious. That the questions presented bring the case fairly within the jurisdiction of the Court to grant *certiorari* we have no doubt. We believe that, upon consideration of the provisions of the Civil Code printed in the Appendix, along with petitioner's pleading in the State courts, the Court will find that the showing is such that a writ should be granted. And we should earnestly expect that, upon consideration of the merits on the pleading and evidence, as well as lack of evidence to support the judgment, the Court would reverse the judgment complained of.

Unfortunately, the number of questions and the manner in which they arose made it impossible to present them without a more extensive presentation of the merits than is usual in such cases; and that imposition on the Court we profoundly regret.

We respectfully submit that the writ of *certiorari* prayed for should be granted, and that the judgment complained of should be reversed.

GEORGE SETH GUION,
THOMAS E. FURLOW,
R. HARRY OLIVER,
SEABORN L. DIGBY,
Attorneys for Petitioner.